HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

and

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

W.P.No.4016 OF 2006

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Between:

M/s. Srinivasa Metal Industries,

8-2-293/A/122/F/1/2,

Srikrishna Nagar,

Jubilee Hills, Hyderabad-34

Rep by its proprietor A.Ramulu.

(rep. Through his GPA holder A.Nagaraju)

..... Petitioner

AND

The A.P.Pollution Control Board,

Rep by its Joint Chief Environmental Engineer,

Zonal Office, VI floor, Collectorate Building,

Nampally, Hyderabad and 2 others.

.....Respondents

::ORDER::

Counsel for the Petitioner : Sri A.Sudershan Reddy for Sri M.Rajender Reddy

Counsel for Respondent Nos. 1 and 2: Sri V.Ajay Kumar

Counsel for Respondent No. 3 : Sri S.V.Bhatt

Dated 2/3/2006

Per Sri G.S.Singhvi, CJ

This petition is directed against order dated 6.2.2006 passed by Andhra Pradesh Pollution Control Board (for short 'the Board') for closure of the stone crusher of the petitioner located at Sy.No.334, Nizampet Village, Quthubullapur Mandal, Ranga Reddy District.

A perusal of the record shows that vide Proceedings No.2290/M2/1995, dated 25-4-1996, Assistant Director, Mines and Geology, Hyderabd, granted permission to Sri A.Ramulu, Proprietor of Srinivasa Metal Industries to commence quarrying operations for stone and metal in an area of Ac.5.00 comprised in Sy.No.334, Nizampet Village, Quthubullapur Mandal, Ranga Reddy Distraict, for a period of fifteen years i.e., from 25-4-1996 to 24-4-2011. In furtherance of the said permission, the petitioner established stone crusher at the site in question and started crushing operations. On receipt of complaints from the public and M/s. Maytas Rajeswari

Development (Pvt.) Limited, that blasting operations carried out in the quarry posed a threat to the life of the people living in the area, the Board issued notice dated 22-7-2005 to the petitioner for operating the crusher without obtaining the consent. The Board also directed inspection of the quarry, as a consequence of which, the following facts were found at the site:-

> "i. M/s Srinivasa Metal Industries, is located at Sy.No.334, Nizampet (V), Quthubullapur, Ranga Reddy District and is a stone crushing unit with a crushing capacity of about 29 TPD and is operating without CFO of the Board. During inspection, it was observed that the unit is also erecting another crusher in the same premises without obtaining CFE of the Board for additional unit. The commissioning of primary crusher, secondary crusher, dust bunkers for the new crusher were in progress.
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> ii. The nearest habitation is Rajeev Gandhinagar which is at a distance of about 250 mtrs and the township of M/s Maytas Rajeswari development Pvt. Ltd., is located adjacent to it. The crusher is at a distance of about 55 mtrs. From Nizampet (V) further, this is fact developing area and many residential layouts are coming up nearby.
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> iii. Notice was issued to the industry on 22.07.2005 for operating the crusher without CFO of the Board. There is no reply from the crusher.
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> iv. Also following observations were made:

a. The industry has covered the vibrating screens with MS sheets.

b. The industry has provided water sprinkling at screening operation and at the secondary crusher only. Industry has provided the sprinkling at other dust generating points like bunker, dust falling point, internal roads etc.

c. The industry has not covered the dust bunker and the material conveyors with MS sheets.

d. The industry has not constructed Metal roads within the premises.

e. The industry has not constructed wind-breaking walls.

f. The industry has not developed green belt within industry premises.

g. Huge fugitive dust emissions were observed meat the primary crusher, secondary crusher, sieving operations and other points.

h. the Ambient Air Quality Monitoring was conducted in the industry's premises on 13.12.2005 and values of RSPM – 1195 ug/m^3 & 471 ug/m^3 and TSPM-1291 ug/m^3 & 1660 ug/m^3."

After hearing the representative of the petitioner and the complainants, CFO Committee of the Board decided to recommend closure of the petitioner's industry on the ground that though it had provided sprinkling at screening operation and at the secondary crusher, but no sprinkling has been provided at other dust generating points like bunker, dust falling point, internal roads etc.; that the industry had not covered the dust bunker and material conveyors with M.S. sheets; that the industry had not constructed metal roads within the premises; that the industry has not constructed wind-breaking walls; that the industry has not developed green belt within its premises; that huge fugitive dust emissions were observed near the primary crusher, secondary crusher, sieving operations and other points and that the ambient air quality violated the standard of 600/ug/m3. The Board accepted the recommendations of the CFO Committee and passed orders under Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987 (for short 'the Act'). Accordingly, Joint Environmental Engineer, Zonal Office, Hyderabad, issued the impugned order.

Sri A.Sudarshan Reddy, learned counsel for the petitioner fairly conceded that an alternative remedy of appeal is available to the petitioner under Section 31 of the Act, but argued that the said remedy should not be treated as a bar to the entertaining of the writ petition because the impugned order is vitiated due to violation of rules of natural justice. He submitted that before ordering closure of the industry, the Board did not give an effective opportunity of hearing to the petitioner and, therefore, the order under challenge should be declared as a nullity.

We have considered the submission of the learned counsel in the backdrop of averments contained in the writ petition and documents annexed with it. In paragrapah 2 of the order under challenge, a reference has been made to notice dated 22-7-2005 issued to the petitioner for operating the crusher without obtaining consent. In paragraph 5, reference has been made to the hearing held on 27-1- 2006 at which the representative of the petitioner industry and the complainants had appeared. This prima facie belies the petitioner's assertion that the impugned order was passed without giving it notice and effective opportunity of hearing. Moreover, we find that the averments contained in the affidavit suggesting that the order of closure was passed without giving notice of opportunity and hearing to the petitioner

have not been verified as per the requirement of Order XIX, Rule 3 of the Code of Civil Procedure and Rule 5 of the Writ Proceedings Rules, 1977 and, therefore, the same cannot be acted upon for the purpose of recording a finding of fact that the impugned order was passed without hearing the petitioner. The verification of the affidavit filed by Sri A.Naga Raju, S/o.A.Ramulu who has described himself as General Power of Attorney Holder of the petitioner reads as under:-

> "I, A.Nagaraju S/o A.Ramulu, Age of 36 years Occ.Business, R/o 8-2-293/A/122/F/1/2, Srikrishna Nagar, Jubilee Hills, Hyderabad, petitioner herein having well acquainted with the facts, do hereby verify and state that the contents of paras 1 to 15 are true and correct to the best of my knowledge, information and as per records and legal advice."

In terms of Rule 5 of Writ Proceedings Rules, 1977, the petitioner is required to verify the facts either on the basis of personal knowledge or information derived from the particular source and clearly specify the particular paragraphs which are true to his knowledge and which are based on the information. An omnibus declaration that all the paragraphs are true to the best of the deponent's knowledge, information, records and legal advice cannot be treated to be in consonance with the spirit of the rule. Therefore, we are unable to rely on the affidavit of the petitioner for the purpose of holding that the impugned order is vitiated due to violation of the rule of hearing.

As regards the efficacy of the remedy of appeal, we are not at all impressed by the submission of the learned counsel. The appellate Authority constituted under the Act comprises of Administrative Technical Judicial persona and there is no reason to think that such an authority cannot effectively decide the points which may be raised by the petitioner in support of his appeal.

For the reasons mentioned above, the writ petition is dismissed leaving the petitioner free to avail the alternative remedy of appeal.

G.S.SINGHVI, CJ

Dt.2/3/2006

G.BHAVANI PRASAD,J

msv/ARS/vtv